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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 KATHLEEN NOBLES,

8 Plaintiff,

9 v.

10 FRED M. KERN, et al.,

11 Defendants.
12

Case No. 19-cv-07362-BLF

**ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
PRELIMINARY INJUNCTION**

[ECF 14]

13 The application of plaintiff Kathleen Nobles (“Nobles”) for a right to attach order against
14 the property of defendants Fred M. Kern (“Kern”) and Plum Holdings LLC, a Nevada Limited
15 Liability Company (“Plum Holdings”), and for a preliminary injunction, ECF 14, came on for
16 hearing before the Honorable Beth Labson Freeman on March 6, 2020. The Court has separately
17 memorialized its grant of the motion for a right to attach order. ECF 46. Below, the Court
18 memorializes its oral ruling on the motion for a preliminary injunction, which the Court DENIED
19 WITHOUT PREJUDICE.

20 To obtain a preliminary injunction, Nobles must establish: (1) likelihood of success on the
21 merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance
22 of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Natural*
23 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit has also approved a “sliding scale”
24 “variant of the *Winter* standard,” under which a plaintiff can meet her burden by showing there are
25 “serious questions going to the merits”—a lesser showing than a likelihood of success on the
26 merits— if she can also show that “the balance of hardships tips *sharply* in the plaintiff’s favor.”
27 *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017) (internal quotation marks and
28 citations omitted). Importantly, “even under the sliding scale standard, the other two *Winter*

1 factors—likelihood of irreparable harm and that the injunction is in the public interest—must be
2 satisfied for a preliminary injunction to be issued.” *Cascadia Wildlands v. Scott Timber Co.*, 715 F.
3 App’x 621, 623 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135
4 (9th Cir. 2011)).

5 At this time, and in light of the Court’s issuance of a right to attach order under California
6 Code of Civil Procedure §§ 483.010 *et seq.*, ECF 46, there is no likelihood of irreparable harm to
7 Nobles. As Plaintiff’s counsel agreed at the March 6, 2020 hearing, the right to attach order will
8 provide Plaintiff with the protections she seeks. A preliminary injunction is therefore unnecessary.
9 The Court DENIES WITHOUT PREJUDICE the motion for a preliminary injunction.

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11 **IT IS SO ORDERED.**

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13 Dated: March 6, 2020

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15 BETH LABSON FREEMAN
16 United States District Judge
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